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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1956.

No. 641.

PAUL HAMMERS,
Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS
of the City of Mattoon, Illinois, a
Municipal Corporation,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois, Cause No. 34,163.
There Heard on Appeal from the Appellate Court of Illinois, Third District.

PETITION FOR WRIT OF CERTIORARI.

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INDEX.

	Page
Reports of Opinions in Courts Below	2
Grounds Upon Which Jurisdiction of U. S. Supreme Court Is Invoked	2
Date of Judgment Sought to Be Reviewed	2
Statutory Provision Believed to Confer Jurisdiction on U. S. Supreme Court	2
Questions Presented for Review	3
Constitutional Provisions Involved	3
Statement of the Case	4
Argument	9
Appendix, Containing Opinions of Courts Below	17
Opinion of Board of Fire and Police Commissioners	17
Opinion of Circuit Court of Coles County, Illinois	22
Opinion of Illinois Appellate Court, Third District	24
Opinion of Illinois Supreme Court, Denying Leave to Appeal	38

Cases Cited.

Commissioners of Drainage District v. Smith, 233 Ill. 417, at pp. 425, 426 (84 N. E. 376)	13
In re Murchison, 349 U. S. 133, 136, 75 S. Ct. 623	11, 16
Ohio Bell Telephone Co. v. Comm., 301 U. S. 292, at pp. 304, 305 (81 L. Ed. 1093, at 1101, 1102)	14
Smith v. Dept. of Registration, etc., 412 Ill. 332, at p. 341 (106 N. E. 2d 722)	13

St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38, at p. 51 (80 L. Ed. 1033, 1041) 13

Tumey v. Ohio, 273 U. S. 510, 532, 71 L. Ed. 749 758 ..... 14, 15

Statutes Cited.

Illinois Revised Statutes, Chapt. 24, Sect. 14-11 10
Illinois Revised Statutes, Chapt. 110, Sects. 265-275.... 11
28 U. S. C. A. 1257 2

Constitution Cited.

United States Constitution, Amendment XIV 3, 14

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PETITION FOR WRIT OF CERTIORARI.

Paul Hammers, petitioner, hereby respectfully petitions the Supreme Court of the United States for a Writ of Certiorari, directed to the Supreme Court of Illinois, the state court of last resort which passed final judgment in this cause by denying leave to appeal from the final decision of the Illinois Appellate Court, Third District. The Appellate Court sustained the decree of the Circuit Court of Coles County, Illinois, which decree had sustained the findings of an administrative tribunal, the Board of Fire and Police Commissioners of the City of Mattoon, Illinois.

REPORTS OF OPINIONS IN COURTS BELOW.

The Illinois Supreme Court did not publish an opinion, but denied leave to appeal by an Order, a copy of which is appended hereto.

The Illinois Appellate Court, Third District, delivered a written opinion which has not as yet been published in the reports. A copy of that opinion is appended hereto.

The opinions of the Board of Fire and Police Commissioners and the Circuit Court of Coles County are not published in any official report, but copies of same are appended hereto.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

I.

The judgment sought to be reviewed, which is the denial of the Supreme Court of Illinois for leave to appeal, was entered on date of September 21, 1956, at 5 P. M. The transcript of the ruling appended hereto so shows.

II.

The statutory provision which confers jurisdiction on this Court is Title 28, Section 1257, U. S. Code, Ann., which is as follows:

> 1257. State courts; appeal; certiorari.
>
> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) . . .
>
> (2) . . .
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in ques-

tion or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

THE QUESTIONS PRESENTED FOR REVIEW.

The question presented for review is: Where a state statute provides that a police officer shall not be discharged except for cause and upon written charges and after an opportunity to be heard, and where the charges are to be investigated by a Board of Fire and Police Commissioners, has due process of law been denied the officer where the three members of the Board of Fire and Police Commissioners prepare written charges, and the same three men then sign the charges and file them, and the same three men then sit as the hearing tribunal and hear and decide the charges which they themselves have prepared, signed and filed? Is due process of law afforded an accused officer when he is tried by his accuser? Can an administrative tribunal be both accuser and judge?

A more detailed reference to the state statute referred to above will be found in our argument, and to refer to same here would unduly burden the Court.

CONSTITUTIONAL PROVISIONS INVOLVED.

"Section 1 . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Amendment XIV.

STATEMENT OF THE CASE.

Prior to the date of January 29, 1952, Paul Hammers had been a policeman for the City of Mattoon, Illinois, for a number of years (Abst. p. 14). On date of January 29, 1952, the Chief of Police made plans to lay a trap in an effort to apprehend a person who had been attacking women in the City of Mattoon (Abst. p. 24). A trap was laid, and a number of the officers of the Mattoon Police Department were assigned to assist in the execution of the plan. Petitioner was one of the officers who voluntered to assist in this work (Abst. p. 24). Petitioner, alleging that he had not been advised as to when he should leave, left after he thought that there would be no further chance to apprehend the criminal, and went home in order to change clothes and report back for regular duty at his regularly assigned hour (Abst. pp. 84, 85). Shortly after the petitioner left the scene of the trap one of the other officers was attacked by an unknown assailant, and, it is alleged, the officer was injured.

The Chief of Police dismissed the officer and told him to go home. Later a hearing was held before the Board of Fire and Police Commissioners in accordance with the provisions of a statute regulating the dismissal of fireman and policemen, and which statute is set forth in the opening paragraphs of our argument in this petition. The discharge was made permanent by the Board and the officer was dismissed. This dismissal was appealed to the Circuit Court of Coles County, Illinois, and then to the Appellate Court of Illinois, where it was held that the dismissal was invalid for the reason that the officer had not been given proper notice of the hearing, and for the reason that written charges had not been filed. This decision was entered on date of February 25, 1954, and is reported in the official reports as Hammers v. Board of Fire and Police Commissioners of the City of Mattoon, Illinois, 1 Illinois Appellate

2d 421, 117 N. E. 2d 798. This case is not a companion case, for the present case is based on new charges. Therefore, the case cited above is not copied into the appendix of this Petition.

The officer was then reinstated, and, three days after his reinstatement, charges were filed against him again. The charges were prepared on the letterhead stationery of the Board of Fire and Police Commissioners of the City of Mattoon, Illinois, respondent herein, and contained six charges (Abst. pp. 2 to 8). The first charge was prepared by copying into the charge a letter which had been written by the Chief of Police, dated February 1, 1952, and which set forth the incidents which occurred on date of January 29 and January 30, 1952 (Abst., pp. 3-5). Five other charges were set forth in the specification of charges against the officer, none of which included any further quotation from the letter of the Chief of Police, and those charges were signed by the three members of the Board of Fire and Police Commissioners (Abst. pp. 6-8).

The petitioner herein, Paul Hammers, filed an Answer to the statement of facts which had been filed by the defendant Board, and in that Answer he stated that the Board of Fire and Police Commissioners did not have jurisdiction to file the charges or to hear the matter, and that the cause should be dismissed (Abst. p. 8).

The matter was set for hearing, **and the hearing was held before the same three board members who had prepared, signed and filed the charges against the officer** (Abst. pp. 11, 13). At the opening of the hearing counsel for the officer stated "we deny the power of the board to bring these charges, we deny that the board has jurisdiction to bring the charges, and we deny that the board has jurisdiction to hear the charges" (Abst. p. 21).

The Illinois Statute which governs procedure before the Board of Fire and Police Commissioners does not require

any type of answer or pleading by the officer accused, and does not require the accused officer to present evidence in his behalf. The statute referred to, and the statute governing the procedure, is set forth in our argument in this petition.

The hearing was had on all six of the charges which had been preferred (Abst. pp. 21 to 106).

The Board of Fire and Police Commissioners entered a decision, which decision was written on letterhead stationery of the Board of Fire and Police Commissioners, as had been the specification of charges which had been brought by the board (Abst. pp. 10 and 13). The decision was signed by the same three men who had preferred the charges against Mr. Hammers and who had sat as the hearing tribunal (Abst. pp. 10 and 13). The decision found against Mr. Hammers, and found that he was guilty of the charges set forth in charges one and two of the Specification of Charges. As stated above, charge one was prepared by copying a letter which had been written by the Chief of Police. Charge two, as well as the other charges, did not contain any quotation from the letter of the Chief of Police, but were charges brought by the Board members (Abst. pp. 2 to 8).

The decision states on page 11 of the abstract that the decision is based solely on the charges contained in the letter written by the Chief of Police on date of February 1, 1952, and states that the additional charges were subsequently withdrawn. The record does not show at any place that the charges were withdrawn during the course of the proceedings, and the only reference in the record to the withdrawal of any charges is in the decision (Abst. p. 11). A copy of the decision of the Board is appended this petition. Proof of the fact that the Board heard evidence on all six charges will be found on the following pages of the abstract: 28, 30, 35, 54, 87. The Board rested

its case at page 87 of the abstract and no reference was made to dismissing any of the charges.

The decision of the Board of Fire and Police Commissioners was dated July 21, 1954 and became final on that date. On date of July 26, 1954, pursuant to the provisions of the Administrative Review Act of the State of Illinois, pertinent sections of which Act are quoted in the opening paragraphs of our argument, an appeal was taken to the Circuit Court of Coles County, Illinois. The complaint which was filed in the Circuit Court by way of appeal from the decision of the administrative tribunal states that the Board did not have jurisdiction to hear the controversy and did not have jurisdiction over the plaintiff and that the plaintiff was not given a fair hearing or investigation and that he was denied the rights and protections afforded him by virtue of statute. The complaint further alleges that the decision of the Board is against the manifest weight of the evidence and against the law (Abst. pp. 17, 18).

The provisions of the Administrative Review Act governing appeal do not require the filing of any pleadings by the person taking the appeal, but the pleadings consist only of a transcript of the proceedings before the administrative tribunal. The governing statute is set forth in the opening paragraphs of our argument in this petition. The Circuit Judge sustained the finding of the Board dismissing the petitioner and a copy of the decree is appended to this petition. The decree is very brief, and merely summarily affirms the decision of the Board and the Court overlooked or failed to consider the points complained of in Petitioner's pleading.

This decree was entered on date of July 22, 1955, and became final on that date, but reviewable by appeal.

Appeal was taken to the Appellate Court of the State of Illinois, and that Court entered a decision on date of May

14, 1956, affirming the judgment of the Circuit Court of Coles County and of the defendant Board (Abst. p. 108). The opinion of the Appellate Court is appended hereto. The Appellate Court makes reference in paragraph eight of its opinion to the fact that we have contended that the Board of Fire and Police Commissioners could not legally prefer the charges and then sit as judges at the hearing thereof, and that the appellant (petitioner here) has contended that due process of law applies to administrative proceedings and that due process of law has not been afforded to Officer Hammers.

On date of July 20, 1956, this petitioner filed with the Supreme Court of the State of Illinois, his petition for leave to appeal, which petition was denied on date of September 21, 1956. A copy of this denial is appended hereto. Said denial of leave to appeal was the final decision of the Supreme Court of Illinois, the Court of last resort in the State of Illinois.

As stated above, and as the excerpts from the statutes involved will show, no pleading was required of the Petitioner herein in the proceeding before the administrative tribunal, or on appeal to the Circuit Court. The pertinent sections of the governing statutes appear at the opening of our argument in this Petition.

The first formal pleading or brief required was in the appeal to the Appellate Court. The Appellate Court opinion, in paragraph eight (see appendix), makes reference to the fact that we raised the due process of law question, and that question was adversely passed on by the Appellate Court.

ARGUMENT.

May It Please the Court:

This petition is based upon the proposition that the Illinois Appellate Court, Third District, the Court which delivered the opinion complained of, and the Illinois Supreme Court, the Court which denied the petition for leave to appeal, decided the question of denial of due process of law in a way that is not in accord with applicable decisions of the Supreme Court of the United States.

The question before us is this: Where there is a state statute which provides as follows:

> "14-11. Removal for cause—Investigation of charges—suspension—review. No officer or member of the Fire and Police Department of any municipality subject to this article who has held that position for more than one year prior to the date this Article becomes effective in that municipality, or who has been appointed under the rules and examination provided by this Article, or was appointed under or held in position for more than one year prior to the adoption of this act, shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense. The charges shall be investigated by the Board of Fire and Police Commissioners, and in case an officer or member is found guilty, the Board may remove or discharge him, or may suspend him not exceeding ten days without pay. The Board may suspend any officer pending his investigation, but not to exceed thirty days at any one time . . .
>
> All officers and members of either the Fire or Police Department of any municipality holding their positions by virtue of one of the methods specified in Paragraph 1 of this Section are City Officers and shall be entitled to the protection afforded by this Article.

The provisions of the 'Administrative Review Act' and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply and govern all proceedings for the judicial review of final administrative decisions of the Civil Service Commission hereunder."

(Illinois Revised Statutes, Chapt. 24, Sect. 14-11.)

and where the Administrative Review Act referred to in said statute provides as follows:

"265. The act shall apply to and govern every action to review judicially a final decision of any administrative agency where the act creating or conferring power on said agency, by express reference, adopts the provisions of this act. In all such cases, any other statutory, equitable, or common law mode of review of decision of administrative agencies heretofore available shall not be employed after the effective date hereof.

"267. . . .

"270. . . .

"274. Scope of Review. Every action to review any final administrative decision shall be heard and determined by the Court with all convenient speed. The hearing and determination shall extend to all questions of law and of facts presented by the entire record before the Court.

"275. Powers of Trial Court. The Circuit or Superior Court shall have power to affirm or reverse the decision in whole or in part, or to reverse and remand the decision in whole or in part. Technical errors in the proceedings before the administrative agency or its failure to observe the technical rules of evidence shall not constitute grounds for the reversal of the administrative decision unless it appears to the trial court that such error or failure materially affected

the rights of any party and resulted in substantial injustice to him."

(Only pertinent sections are quoted.)

(Illinois Revised Statutes, Chapt. 110, Sects. 265-275.)

and where the Board of Fire and Police Commissioners prepared a specification of charges which set forth six charges against an officer (petitioner here), and the three board members signed the charges and filed same, and set same for hearing, and where the same three officers who had prepared and signed the charges then set as the hearing officers and the trial tribunal and heard the charges which they had preferred, and then found against the officer and filed a written decision which was signed by the same three board members who had made the original accusation—has due process of law and the fair trial required by due process of law been denied the defendant officer, petitioner here?

This question has been passed upon by this Court many times, and we desire to argue this case by making brief reference to the well established law which is applicable.

The most recent decision of this Court is found in **In re Murchison, 349 U. S. 133, 136, 75 S. Ct. 623.** There this Court said at page 136 of the U. S. Report:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'Every procedure which would offer a possible temptation to the average man

as a judge * * * not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' (Tumey v. State of Ohio, 273 U. S. 510, 532, 47 S. Ct. 437, 444, 71 L. Ed. 749.) Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.'" (Offutt v. United States, 348 U. S. 11, 14, 75 S. Ct. 11, 13.)

"It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. Perhaps no State has ever forced a defendant to accept grand jurors as proper trial jurors to pass on charges growing out of their hearing. A single 'judge-grand jury' is even more a part of the accusatory process than an ordinary lay grand juror. Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. While he would not likely have all the zeal of a prosecutor, it can certainly not be said that he would have none of that zeal. Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer."

In the present case we can see that the petitioner has been subjected to the very thing that this Court condemned in the first and last sentences of the second paragraph of the case quoted. Paul Hammers was investigated and accused by the three board members and he was then tried by the same men who had accused him and had signed their names to the accusation.

That these are the facts, and that the three board members signed the charges and made the accusation is clearly

set forth on pages 2 to 8 of the abstract of the record in the court below, copies of which have been filed with the Clerk of this Court.

It is not denied that the same three board members sat as the hearing tribunal and then prepared and signed a written decision. It is so shown on pages 10 to 13 of the abstract of the record.

The rule relied upon has been so well established by the decisions of this Court and the decisions of the Supreme Courts of the various states that lengthy comment on the law is not necessary. The Supreme Court of Illinois, the Court which denied leave to appeal from the Appellate Court, stated in **Commissioners of Drainage District v. Smith, 233 Ill. 417, at pp. 425, 426 (84 N. E. 376)**:

> "A statute which compels the litigant to submit his controversy to a tribunal of which his adversary is a member makes his antagonist his judge and does not afford due process of law."

and the Supreme Court of Illinois has held, in **Smith v. Dept. of Registration, etc., 412 Ill. 332, at p. 341 (106 N. E. 2d 722)**, that "Due process of law presupposes a fair and impartial hearing before a fair and impartial tribunal." This is in accord with the decision of this Court in the Murcheson case, which is cited at the opening of this argument.

But in the case now before the Court, Paul Hammers was not tried before an impartial tribunal, for the trial tribunal prepared the accusation and signed same, and in effect said, "Paul Hammers, we accuse you, and say that you are guilty, of charges one through six, and we hereby sign our names to this accusation as an indication of our conviction of your guilt." They then proceeded to try Mr. Hammers. Certainly due process of law has been denied.

This Court held in **St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38, at p. 51 (80 L. Ed. 1033, 1041)**, that in ad-

ministrative proceedings the requirements of due process must be met. And in Ohio Bell Telephone Co. v. Comm., 301 U. S. 292, at pp. 304, 305 (81 L Ed. 1093, at 1101, 1102), this Court said:

> "Indeed much that they (administrative tribunals: our observation) do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. Al the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' . . . of a fair and open hearing be maintained in its integrity . . . The right to such a hearing is one of the 'rudiments of fair play' . . . assured to every litigant by the Fourteenth Amendment as a minimal requirement . . . There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when the minimal requirement has been neglected or ignored."

In Tumey v. Ohio, 273 U. S. 510, 532, 71 L. Ed. 749, 758, this Court held that ". . . Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law. . . . A situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him."

Certainly the Fourteenth Amendment is as operative in a civil case involving a valued property right as it is in a criminal case. And here, the three board members who prepared and signed the charges must have believed the truth of the charges appearing above their signatures, and, this being true, they were partisan. Being partisan,

they were disqualified, under the **Tumey** decision above, to sit as the hearing tribunal.

Now the Appellate Court has stated in paragraph sixteen (16) of its opinion (and which is incorporated in this Petition) that it was not the Board of Fire and Police Commissioners that made the accusation, but it was the former Chief of Police, Larkin Jones. Pages 2 to 8 of the abstract of the record show that the contrary is true. The Board incorporated a two year letter written by Jones, and added five more charges, all of which five charges were prepared by the Board, **and none else**, and then signed the charges which they later heard and decided.

In conclusion, and in an attempt to show that due process of law has been denied, we submit the following examples for the consideration of the Court:

Suppose that one of our Circuit Judges would become involved in an automobile accident and he should be convinced that the other party was at fault. Suppose that the Judge then prepares a Complaint and files same in one of the Courts over which he presides, and then sets the case for trial, and then proceeds to hear the case. Even if the case were tried by a jury, the Supreme Court would hold that the adversary did not receive a fair trial, and that he was not in a position to be afforded due process of law, and any verdict against the adversary would be reversed.

Suppose that one of the Judges of this Court should, as a citizen, have occasion to file a Complaint against a policeman, and the policeman should be tried before the Board of Fire and Police Commissioners and found guilty, after which time the case was appealed to this Court. Would not the Judge of this Court who filed and signed the charges (as did Board Members Stevens, Williams and Gibson in this case) immediately disqualify himself, and state that due process of law could not be afforded the policeman under the circumstances?

Suppose that opposing counsel in this case, as City Attorney of the City of Mattoon, should try this case before the Defendant Board. At that point he would have no interest in the case other than representing the City to the best of his ability. Let us suppose that the Defendant Board found the defendant officer guilty and that the case was then appealed to the Circuit Court. Let us assume further that the City Attorney, in the meantime, becomes a Circuit Judge. Is it not obvious that when the case came up for trial that the Circuit Judge would disqualify himself to hear a case that he had previously prosecuted?

This matter has been ex parte from start to finish, and the Fourteenth Amendment has been grossly violated.

The answer to this Petition is found in the language of this Court in **In re Murcheson** (supra), 349 U. S. 133, 136, 75 S. Ct. 623, 625, where this Court said:

> "Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer."

We respectfully pray that the doctrine of the Murcheson case be invoked here, and that the Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX.

OPINION OF ADMINISTRATIVE TRIBUNAL, THE BOARD OF FIRE AND POLICE COMMISSIONERS.

Board of Fire and Police Commissioners.

M. G. Stevens, Chairman
William T. Williams, Secretary
Robert Gibson

Decision of the Board of Fire and Police Commissioners of the City of Mattoon, Illinois, on Charges of Misconduct Upon the Part of Paul Hammers, While a Patrolman on the Police Force of the City of Mattoon, Illinois.

This cause came on to be heard by the Board of Fire and Police Commissioners of the City of Mattoon, Illinois, on the 4th day of June, 1954, upon charges filed with the Board under date of February 1, 1952, by L. H. Jones, then Chief of Police of the City of Mattoon, Illinois, and G. W. Smith, then Mayor of said City, against Paul Hammers, a patrolman then on the police force of said City.

On February 4, 1952, the Board of Fire and Police Commissioners held a hearing of said charges, at which hearing, the said Paul Hammers was present and testified, and the Board decided that said charges against said Paul Hammers were proven and said Board ther upon discharged said Paul Hammers from the Mattoon police force.

An appeal was perfected by the said Paul Hammers to the Circuit Court of Coles County, Illinois, to reverse said decision and said Court entered a judgment sustaining the decision of said Board. Subsequently an appeal to Appellate Court of Illinois for the Third District was perfected and that Court reversed the judgment of the Circuit Court of Coles County, Illinois, on the technical ground that the Board did not have jurisdiction of the person of Paul

Hammers for the reason that a written copy of the charges against him had not been delivered to Paul Hammers prior to the hearing on said charges.

Subsequent to the decision of the Appellate Court in said cause, and on the 15th day of May, 1954, the said Paul Hammers was reinstated as a patrolman on the Mattoon police force in order that he might receive a second hearing on the charges filed against him on February 1, 1952, and reinstated on the 18th day of May, 1954, on which date said Paul Hammers was served with a written copy of the charges against him and thereupon he was again relieved of his position of patrolman on the Mattoon police force and said charges were thereupon set for hearing on June 4, 1954.

The charges against the said Paul Hammers consisted of the original charges contained in the letter of L. H. Jones, Chief of Police of the City of Mattoon, Illinois, and G. W. Smith, Mayor of said City, and certain additional charges filed at that time, which additional charges were subsequently withdrawn by counsel for this Board, and this Board's opinion is based solely upon the charges contained in the letter of February 1, 1952, delivered to this Board by L. H. Jones, Chief of Police of the City of Mattoon, Illinois and G. W. Smith, Mayor of said city and the evidence taken before the Board with reference to said charges. The said letter of L. H. Jones, Chief of Police and G. W. Smith, Mayor, delivered to this Board on February 1, 1952, containing said charges, was as follows:

"February 1, 1952.

"Mr. M. Glenn Stevens,
Chairman, Police and Fire Board,
Mattoon, Illinois.

"Dear Sir:

"On the night of January 29, 1952, a plan was made by myself to be put into effect on the night of January

30, to set a trap for the person who had assaulted Nedra Ellsworth. Under this plan, all officers, including Paul Hammers, were instructed to place their cars in specified spots in and around the 1400 block of Lafayette Avenue. All officers, including Officer Hammers, were instructed by myself not to run their motors and not to leave the scene until I had picked up Officer Heckwine, who was to be used as a decoy, and had personally come by each car and notified the officer driving the car that he could leave the vicinity where the cars were stationed.

"On the night of January 30, 1952, pursuant to said plan, all police cars and two sheriff cars were assigned the places indicated by the schedule attached to this letter. Officer Paul Hammers and Officer Baker were assigned to one car spotted at the corner of 15th and Lafayette. Officer Hammers was driving the car and Officer Baker was with him. According to Officer Baker, he and Officer Hammers sat at that spot while Officer Heckwine made four trips by their car. After Officer Heckwine made the fourth trip, Officer Hammers said, 'I guess it's all over. Let's go,' and proceeded to leave the allotted spot. Officer Hammers drove east on Lafayette to 14th, then north on 14th to Charleston, west on Charleston to 15th, and south on 15th to 221 South 15th Street, in the vicinity of Cape Cod where Officers Plummer and Creek were stationed in their car. Officer Hammers told Officers Plummer and Creek that it was 'over' and 'let's go home,' and thereupon Officers Plummer and Creek left the spot allotted to them leaving two gaps in the line. After Officer Heckwine was assaulted the man escaped, undoubtedly due to Officer Hammers leaving the scene of the trap and causing Officers Plummer and Creek to leave.

"Officer Hammers wilfully and without authority disobeyed the orders of myself as Chief of Police in

not remaining at the post assigned until relieved by my personal order and through his wilful conduct endangered the life of Officer Heckwine and so disrupted our plan to apprehend the person who has been causing these assaults that we were unable to apprehend him. Upon returning to the station, I I reprimanded Officer Hammers swore at me, and I advised him I would have him locked up for disorderly conduct and that he should go home. He informed me that I could not send him home. I was advised by the City Attorney to ask for Officer Hammers' resignation and after repeated attempts to contact him, all of which Officer Hammers ignored, I was unable to speak to him and he has since avoided talking or discussing this matter with me.

"It is my recommendation that Officer Hammers be relieved of his duties as a police officer for the City of Mattoon. Other officers on the force have advised me that they refuse to work with Officer Hammers as they do not feel sure of him.

"Respectfully submitted,

(S) Larkin H. Jones,
Chief of Police of the City of Mattoon,

(S) G. W. Smith,
Mayor."

This Board, after hearing the evidence then produced before it, at which hearing the said Paul Hammers testified in person and produced various other witnesses who likewise testified, and after hearing the arguments of counsel, and having examined the testimony introduced before the Board, finds that the following charges contained in the letter of L. H. Jones, former Chief of Police of the City of Mattoon, Illinois, and G. W. Smith, former Mayor of said City, have been sustained by the evidence:

1. That on the 29th day of January, 1952, the said Paul Hammers wilfully and without authority disobeyed the orders of his superior officer, the Chief of Police of Mattoon, Illinois, in failing to remain at the post of duty assigned to him.

2. That on said date said Paul Hammers, by his wilful disobedience of the orders of his superior officer, endangered the life of officer John Heckwine.

3. That on said date the said Paul Hammers by his wilful disobedience of the orders of his superior officer, disrupted the plan of the Chief of Police and certain police officers of the City of Mattoon, Illinois, to apprehend the person who had theretofore viciously assaulted a woman or women in the City of Mattoon, Illinois.

4. That on said date, the said Paul Hammers cursed his superior officer, L. H. Jones, then Chief of Police of the City of Mattoon, Illinois.

5. That on said date, the said Paul Hammers was guilty of insubordination toward his superior officer, L. H. Jones, then Chief of Police of the City of Mattoon, Illinois.

We find from the evidence that the said Paul Hammers is not a fit and proper person to be a member of the police force of the City of Mattoon, Illinois, and his discharge by this Board on the 5th day of February, 1952, is hereby made permanent.

Dated at Mattoon, Illinois, this 21st day of July, A. D. 1954.

Board of Fire and Police Commissioners,

By /s/ M. G. Stevens,
Chairman,

/s/ W. T. (Pat) Williams,
Secretary,

/s/ R. H. Gibson,
Member.

OPINION OF CIRCUIT COURT.

State of Illinois, } ss.
County of Coles. }

In the Circuit Court Thereof.

Paul Hammers,
Plaintiff,

vs.

The Board of Fire and Police Commissioners of the City of Mattoon, Illinois, and the City of Mattoon, Illinois, a Municipal Corporation,
Defendants.

No. 54 L 74.

This cause came on to be heard by the Court on the transcript of the record filed herein under the terms of the Administrative Review Act of the State of Illinois, and the briefs and arguments of counsel for the respective parties, and the Court, after due consideration of said transcript of record and the evidence contained therein, and said briefs and arguments of counsel,

Finds:

That although the evidence in the record is highly conflicting, there is substantial evidence in the record supporting the charges filed against the Plaintiff, Paul Hammers, by Larkin Jones, former chief of police of the City of Mattoon, Illinois, and by G. W. Smith, former mayor of said city.

It is therefore ordered, adjudged and decreed that the prayer of Plaintiff's complaint be and the same is hereby denied and the findings and decision of the Board of Fire

and Police Commissioners of the City of Mattoon, Illinois, against the plaintiff, Paul Hammers, be and the same are hereby sustained.

/s/ Robert F. Cotton,
Judge.

Entered July 22, 1955.

Filed
Jul. 22, 1955
Joseph F. Snyder,
Circuit Clerk and Recorder,
Coles County, Illinois

OPINION OF APPELLATE COURT.

General No. 10060 Agenda No. 10

Paragraph No.

Mr. Presiding Justice Hibbs.

1 The plaintiff, appellant here, instituted this action in the Circuit Court of Coles County to reverse an administrative decision of the Board of Fire and Police Commissioners of the City of Mattoon entered July 21, 1954, which discharged the plaintiff as a policeman. The Circuit Court affirmed the action of the administrative board.

2 On or about February 1, 1952, Larkin Jones, then the Chief of Police of the City of Mattoon, filed a letter with the Board of Fire and Police Commissioners of that city requesting that the Board discharge Paul Hammers, were to take their places in specified spots night of January 29, 1952, the Chief arranged to put into effect on the following night a trap for a person who had assaulted one Nedra Ellsworth. Under the plan all police officers, including the appellant, Paul Hammers, were to take their places in specified spots in the vicinity of the 1400 block on Lafayette Avenue in that city and were not to leave the scene until the Chief picked up Officer Heckwine, who was to be used as a decoy, and personally came by each car and notified the officers that they could leave their post of duty.

3 On the night of January 30, 1952, pursuant to such plan, all police cars and two sheriff's cars were assigned to certain places indicated by the schedule. The plaintiff, the appellant, and Officer Baker were assigned to one car spotted at the corner of Fifteenth

Street and Lafayette Avenue. They stayed there while officer Heckwine made three or four trips by their car and then officer Hammers said: "I guess it is all over, let's go," and proceeded to leave the designated spot to where officers Plummer and Creek were stationed in their car. It was charged that the plaintiff told Plummer and Creek that it was over, "Let's go home," and they also left, thus leaving two gaps in the line.

4 It was further charged in the letter that plaintiff wilfully and without authority disobeyed the orders of the Chief of Police in not remaining at the spot assigned until relieved by personal orders, and through his wilful conduct endangered the life of officer Heckwine and so disrupted the plan to apprehend the person who had been causing the assaults that he escaped.

5 The Chief recommended that officer Hammers be relieved of his duties as a police officer in the City of Mattoon.

6 The Board of Fire and Police Commissioners held a hearing on the purported charges in February, 1952, without filing written charges against Hammers, as required by the provisions of Chapter 24, Sec. 14-11 of Illinois Revised Statutes, 1951. At the conclusion of that hearing the plaintiff here was discharged by the Board. Later he filed a complaint with the Circuit Court to review the decision, which was affirmed. Thereafter Hammers appealed to this court where the cause was reversed for the reason that no written charges had been filed and the appellant nor anyone in his behalf had any knowledge of the contents of the letter or the particular charges against him. (**Hammers v. Bd. of Fire and Police Commissioners**, 1 Ill. App. 2d 421.) In that case it is said: "If the letter written by Chief Larkin Jones to the chairman of the

Board had been given to Hammers in reasonable time so that he would have had full knowledge of the offense charged against him and time to prepare any defense he may have had, then the provisions of the statute would have been satisfied, But this was not done. Instead the officer was notified orally late in the evening of February 3, 1952, that he would have a hearing before the Board at 10:30 A. M. the following morning. This court does not believe that the statute has been complied with, either in letter or spirit."

7 Thereafter the Board of Fire and Police Commissioners ordered the plaintiff reinstated, and three days later, the Board filed the charges against the appellant. The first charge consisted of a recital of the letter of the former police chief, Larkin Jones. Then there was added six other charges. The additional charges, especially three to six, are not now of importance inasmuch as the Board's opinion and decision was based solely upon the charges contained in the letter of February 1, 1952, of the then chief of police, Larkin Jones. The appellant was served with a written copy of the charges against him and relieved of his position as a patrolman on the police force. The charges were set for hearing for June 4, 1954. The decision of the Fire and Police Commissioners Board was filed on the 21st day of July, 1954, and found that the charges contained in the letter of Larkin Jones, former chief of police, had been sustained by the evidence. The Board found that on the 30th day of January, 1952, the appellant wilfully and without authority disobeyed the orders of his superior officer in failing to remain at the post of duty assigned to him and in so doing endangered the life of officer John Heckwine and disrupted the plan of the chief of police to apprehend the person who had theretofore viciously

assaulted a woman in the City of Mattoon, that he cursed his superior officer and was guilty of insubordination towards him. The order finally found that the appellant was not a fit and proper person to be a member of the police force of the City of Mattoon, and his discharge on the 5th day of February, 1952, was thereby made permanent.

8 It is contended by the appellant in this court, (1) That the Board of Fire and Police Commissioners could not legally prefer the charges and then sit as judges at the hearing thereof; (2) That due process of law applies to administrative proceedings as well as judicial proceedings; (3) That in the interpretation of the fire and police commissioners statute, Chap. 24, Article 4, and particularly Sec. 14-11, Ill. Rev. Statutes, it must be liberally construed towards the fireman or policeman; (4) That the discharge of an officer under the provisions of the act must be for "cause"; and finally (5) The decision of the administrative board is against the manifest weight of the evidence.

9 A resume of the facts shows that in January of 1952 a Miss Nedra Ellsworth was going home from the business district of the City of Mattoon between 9:30 and 10:00 P. M. when an unidentified man assaulted her and beat her with a brick or other object, as a result of which she was seriously injured. The attack occurred in the 1400 block of Lafayette Avenue in that city. On January 29, 1952, a meeting to plan strategy was held at the police department. The appellant, Paul Hammers was present and there were other officers also present. A plan was adopted which required placing of several officers in private cars in the vicinity in which the attack had occurred. Officer Heckwine was to be "designed as a woman and serve as a decoy." The arrangement was set up so

that the department would have approximately four men or more who could constantly watch and observe the decoy officer as he walked along the sidewalk in the danger area. Heckwine was to continue to walk the area, and it was on his fifth trip when he was assaulted. "After the trap" should have been sprung following the assault on Heckwine in his female attire, it was found that the plaintiff, who was an alerted officer participating in the plan, had left his post of duty. In the assault Heckwine sustained a blow on the side of the head which raised a knot about half the size of a hen's egg and the assailant escaped.

10 Among the officers who participated in the execution of the plan was the plaintiff, Paul Hammers, and officers, Creek, Plummer and Baker, as well as others including the sheriff and his deputies. Hammers was a senior city patrolman. He and Baker were in Hammers' car on the evening of January 30, 1952, as a part of the execution of the plan to trap the assailant. They were located just south of Lafayette Avenue on 15th Street, a few feet west of where Miss Ellsworth had been attacked. They saw Heckwine walk past them. Baker saw him three times. The car radio was on and the windows were open. At about 9:30 P. M. or shortly thereafter Hammers told Baker it appeared that it was all over and he had to go home and dress in his uniform to go on duty at 11:00 P. M. Baker stated that he believed they should stay and further testified he understood the chief would come by and advise them when to leave. Nevertheless they drove around the block to where officers Plummer and Creek were located at their post of duty and Hammers stated to them that he thought it was all over, in consequence of which Plummer and Creek left. After the plaintiff had left his assigned post of duty,

Heckwine was assaulted about five or ten feet from the alley. Heckwine saw the attacker, drew his gun and fired two shots but the assailant escaped. A search of the area was made without success. The chief of police, Larkin Jones, returned to headquarters and telephoned the plaintiff who shortly thereafter reported at the police station. The chief of police released Hammers from duty and told him to go home.

11 On February 1, 1952 the chief submitted to the chairman of the Board of Fire and Police Commissioners a set of charges which constituted the charge upon which the plaintiff was tried in this proceeding.

12 The plaintiff admitted he attended the meeting on January 29, 1952 in the office of the chief of police concerning the setting of the trap for the night of January 30th following, but he said that the chief did not give any directive in his presence concerning the time when the men were supposed to leave their post of duty. He further testified that Edward Horn, captain of the police force, was present. Horn testified that he was present in the chief's office on the 29th of January, and all men were notified either on the evening the decoy was to be put out or on the evening prior thereto as to where they were to be stationed. Their instructions were that they were to have the windows of their cars down and a signal, the blowing of a police whistle, would indicate that there was trouble and the decoy had been assaulted. The headlights were to be out. He further testified that the officers would remain there until they were given orders to leave.

13 The appellant was tried by a Board of Fire and Police Commissioners of the City of Mattoon on six charges, the first and second of which was the complaint of Larkin Jones, chief of police, and the third, fourth, fifth and sixth charges were withdrawn or held

by the board to have not been established. The first charge is the communication received by the board from the chief of police and the second was that on January 30, 1952 the appellant, while a police officer, used profane and abusive language toward the chief of police and committed acts of insubordination towards the said chief, a part of which is incorporated in the complaint made by the chief.

14 It is true that the specific charges numbered one to six were signed by the board of fire and police commissioners of the city of Mattoon. Complaint is made by the appellant that because the charges were signed by the board, they are disqualified to sit at the hearing. Article 14, Chap. 24, being secs. 14-1 to 14-17 inclusive, 1951 Illinois Revised Statutes, provides for the adoption of the optional Fire and Police Commissioners Act in cities of less than 100,000 inhabitants and also in cities, villages and towns of 13,000 inhabitants and not more than 250,000, which is not subject to an "Act to regulate the civil service of cities" and provides for the appointment of a board of fire and police commissioners, qualification of the members, rules of conduct of the examination of firemen and policemen and their removal and discharge. Sec. 14-11 provides that no officer or member of the fire or police department of any municipality subject to the act "shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense. These charges shall be investigated by the board of fire and police commissioners, and in case any officer or member is found guilty, the board may remove or discharge him, or may suspend him not exceeding ten days without pay. The board may suspend any officer pending this investigation, but not to exceed thirty days at any one time. In the conduct of this investigation, each member of the board shall

have the power to administer oaths and affirmations, and the board shall have power to secure by its subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to the investigation."

15 The only question before this court involves the charges made by Larkin Jones, the then chief of police of the City of Mattoon under date of February 1, 1952. No other question is before this court for review. In our former opinion we merely held that inasmuch as the plaintiff had not been furnished with a copy of the charge and an opportunity to defend himself he had not had a hearing contemplated by the statute and the cause was reversed. The merits of the matter were not disposed of by this court. Thereupon the complaint contained in the letter of the chief of police was incorporated in a charge together with certain other charges, which were later withdrawn or held not substantiated. Plaintiff was served with a copy of the charge and a date was set for the hearing.

16 The board of Fire and Police Commissioners was not in fact in this case the accuser, but it was the chief of police, Larkin Jones. The only connection the board had with the charges upon which the plaintiff was tried and found guilty was to have them written down and personally served in conformity with the statute. In **Tarr v. Hallihan**, 375 Ill. 38, the complaints were filed with the Department of Registration and Education against certain licensed dentists by a regular employee of the department at the request and direction of the department. It was argued that while the hearings were had before the dental examining committee, its personnel was chosen by the director, and while the director may not enter an order of revocation except on the action and written order of the committee, he

has the right to send the case back to the same committee or a new committee whenever he disagrees with the conclusions and recommendations of the committee. From this it was contended that the director can control the action of the committee by continuing to resubmit the cause until a recommendation satisfactory to him is had. It was contended further that in this connection the director was accuser, prosecutor and judge. At page 40 of their opinion the court say: "We are unable to agree with appellants' contention that the procedure is lacking in due process because the complaints were signed by an employee of the department. That appellants are entitled to a hearing before an unbiased tribunal is not questioned. However, the mere fact that charges are made by an employee of the department does not, in our opinion, establish that the dental examining committee would be prejudiced against appellants."

17 In **Pipe Trades, Inc., v. Rauch,** 2 Ill. 2d 278, it is said at page 289: "Looking to the first contention, the argument advanced seems to be that due process of law means judicial process, a premise long since rejected by State and Federal courts. (Citations.) Insofar as due process of law arises in public administrative law, the rule is concisely stated in 42 Am. Jur., Public Administrative Law, Sec. 116, as follows: 'While the constitutional guaranty of due process of law, the object of which is to preserve personal and property rights against the arbitrary action of public officials, applies to administrative as well as judicial proceedings, due process is not necessarily judicial process, except in the case of punishment for crime, and all the formalities of judicial proceedings are not essential to constitute due process of law in an administrative proceeding.' The same section, and many of the cases cited therein, tells us that administrative process by a

board, executive or administrative officer, is as much due process as is judicial process, particularly when judicial review of the administrative action is provided." Again the court say at page 290: "Thus, the requirements have been fully met in this case for it is unchallenged that appellant had notice and a hearing, and, further, it is apparent that a full process of judicial review has been available before the administrative order becomes final."

It is next contended that under the provisions of
18 the statute the officer must be discharged for cause. It will suffice to say without again quoting from the statute that no officer or employee where the fire and police commissioners act is in force can be removed or discharged except "for cause," after written charges and after an opportunity to be heard in his own defense. In the case of **Heaney v. City of Chicago**, 117 Ill. App. 405 at p. 411, it is said: "This, of course, implies that the written charges must state a 'cause' for his removal, which must be some substantial shortcoming which renders his continuance in his office or employment in some way detrimental to the discipline or efficiency of the service." Again it is said at page 411: "That negligence and incompetency on the part of an officer in regard to some particular work which it has been his duty to do or to supervise and look after, are causes for which the Commission may properly allow a removal, cannot be seriously doubted. To hold otherwise would be to make of the Civil Service Act something very different from what the Legislature intended, and a menace instead of a protection to public interests." While that case involved the administration of the Civil Service Act it is so much like the present case involving Sec. 14-11 of Chap. 24 of Illinois Revised Statutes that the holding of the court there is controlling here.

19 It is next contended that the decision of the administrative board is against the manifest weight of the evidence. The chief of police testified that Miss Ellsworth was assaulted in the 1400 block on Lafayette Avenue and on the 29th day of January, 1952, they worked out a scheme at the police station for trapping the assailant. Captain Ed Horn, Paul Smith, who was the radio operator for Coles County, Mike Dowling, the sheriff, Paul Hammers and McDuffy were all there and two or three other men. The plan was discussed with them and each was to have a part. "We determined to lay the trap the next evening." On January 30th they started the trap at nine o'clock. "I told the officers where to place their cars, and officers Hammers and Baker, had their car south of Lafayette Avenue and headed north on the east side of the street approximately fifty or one hundred feet back of the intersection of 15th Street and Lafayette Avenue. Heckwine was designed as a woman." The chief would pick him up at 12th and Lafayette and haul him up to the alley by the Madison theater and Heckwine would proceed on his tour down south 15th Street to Lafayette Avenue, east on Lafayette to 12th Street and the chief would pick him up there and haul him to the alley back of the theater. "The arrangement was so we would have approximately four men or more where the decoy could be seen. The flood lights would furnish background for Hammers and Baker at their position. All the officers took their places on the evening of January 30th. Heckwine was on his fifth round at the time he was assaulted. At the meeting at the police headquarters on January 29th someone asked when they would quit. Someone, not even I, said, 'Let the chief come around and tell us,' and I said, 'Well, that's what I will do.' Two men who were sitting in the car at the corner of 15th Street and Lafayette could have seen

the assault upon Heckwine at the alley between Wabash and Lafayette on 15th Street. The officers I found missing were Hammers, Baker, Creek and Plummer. All four were at the meeting on January 29th. After I found that Creek, Plummer, Baker and Hammers were off duty, I found officers Walker and Elder still on duty and the sheriff and his deputies had not left their station."

20 Edward Horn, captain of the police force, testified he was present when the plans were drawn up with reference to the capture of the assailant of Nedra Ellsworth. That conference took place in the chief's office. The officers were to be at their station about 8:30 and were to remain until they were given orders to leave. "I heard no instruction as to what time the service at the particular station would terminate, but being that he (meaning the chief) is my superior officer, that would be for him to tell me when to leave or the officer with me or any other officer, because he was in charge of the detail, not me."

21 John Baker, a patrolman, testified that he had his advice from the chief and it was his understanding that the chief would "come by and advise each of us when to leave. My recollection is that Hammers was there, and I was in the car with Hammers on the evening of January 30, 1952, located just south of Lafayette Avenue on 15th Street. We could see Heckwine as he approached. We had the radio on and the windows open. I counted three times that Heckwine passed. He could have passed more than that. Officer Hammers said it appeared to him it was all over and he had to go home and dress and prepare to come back to work at eleven o'clock and said, 'I think we'll go' and we left and stopped and talked to officers Plummer and Creek. Hammers told Plummer and Creek that he

thought the thing was over. I believe I stated that we should stay and officer Hammers said that he had to go home and get ready to come back to work at eleven o'clock."

22 It is true that there is also evidence in the record including plaintiff's that the officers assigned were not informed as to how long they were to remain at their stations. The fact is that Hammers knew they were laying a trap for a criminally inclined person who had made a vicious assault on a woman a few nights before. He also knew that his co-patrolman, Heckwine, was disguised as a woman patrolling the particular street or streets involved, and might be assaulted by this person. He claimed that he was off duty at the time but had volunteered his services. Whether he did so volunteer is not material. He was assigned to a certain spot, he knew that the chief of police was in charge, and he had no right to leave his post of duty until he was advised so to do by one of his superior officers. If he had remained in that post he and his companion officer would have seen the assault, inasmuch as the scene thereof was within their view. Notwithstanding the admonishment of his companion, who thought they should remain, the plaintiff not only left his post of duty, but he drove around the block and advised Plummer and Creek, co-patrolmen at their post of duty, that he thought it was all over and was going home, and as a result they also went home.

23 There is in this record substantial evidence that the plaintiff failed to remain at a post of duty assigned to him and thereby endangered the life of his fellow officer, Heckwine, and disrupted the plan to apprehend the person who had theretofore viciously assaulted a woman in the City of Mattoon. Although, as stated above, there is conflict in the evidence, we do not be-

lieve that the order of the Board of Fire and Police Commissioners of the City of Mattoon is contrary to the manifest weight of the evidence.

24 Finally it is contended that inasmuch as no charges were lodged against officers Plummer and Creek the procedure before the board may be attacked as contrary to the equal protection clause of the constitution. We do not believe there is any substance to the point thus made. Further, the plaintiff was a senior patrolman and it was at his suggestion that the matter was over and he was going home that led to their leaving their post of duty.

The judgment of the trial court is affirmed.

Judgment affirmed.

OPINION OF ILLINOIS SUPREME COURT.

United States of America.

State of Illinois,
Supreme Court. } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday the tenth day of September in the year of our Lord, one thousand nine hundred and fifty-six, within and for the State of Illinois.

Present:

Ray I. Klingbiel, Chief Justice.
Justice, Joseph E. Daily.
Justice, Walter V. Schaefer.
Justice, George W. Bristow.
Justice, Harry B. Hershey.
Justice, Charles H. Davis.
Justice, ...
Latham Castle, Attorney General.
Robert G. Miley, Marshal.
Attest: Fae I. Searcy, Clerk Pro Tempore.

Be It Remembered, that, to-wit: on the 21st day of September, 1956, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Paul Hammers, Petitioner, No. 34163 vs. The Board of Fire and Police Commissioners of the City of Mattoon, Illinois, a municipal corporation, Respondent.	Petition for Leave to Appeal from Appellate Court. Third District 54 L 74 10060.

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondent recover of and from the said Petitioner costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, Fae I. Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 28th day of September, 1956.

/s/ Fae I. Searcy, Clerk pro tempore,
(Seal) Supreme Court of the State of Illinois.

Office - Supreme Court, U.S.
FILED
JAN 9 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, A.D., 1956

No. 641

PAUL HAMMERS,

Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS
Of the City of Mattoon, Illinois,
a Municipal Corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, CAUSE NO. 34,163.
THERE HEARD ON APPEAL FROM THE APPELLATE COURT OF ILLINOIS, THIRD DISTRICT.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Of Counsel.

McCORMICK AND HENDERSON, INC., CHICAGO

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A.D., 1956

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PAUL HAMMERS,
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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

May It Please The Court:

In the Courts of Illinois, ranging from the Administrative Board of the City of Mattoon through the Supreme Court of Illinois, some ten or twelve claimed defensive factors have been assigned by the present Petitioner. In this Court, the Petition includes only one of them, viz, the Petitioner's contention that the order discharging him as a police patrolman of the City of Mattoon, Illinois, violates the Constitution of the United States of America. Actually, the Opinion of the Appellate Court of Illinois amply dis-

poses of the matter without help from the Respondent. To clarify the true situation with reference to the present contention of the Petitioner, however, this Opposition Brief is respectfully submitted.

STATEMENT OF FACTS.

In January, of 1952, a Miss Nedra Ellsworth was walking home from the business district of Mattoon between 9:30 and 10:00 P.M. An unidentified man assaulted her and beat her with a brick or some other object. She was seriously injured and was taken to the hospital and was not expected to live (Abst. 23). The attack occurred in the 1400 Block on Lafayette Avenue. Its viciousness was marked and the entire community, especially in the vicinity of the assault, was in a state of agitation.

Larkin H. Jones was Chief of Police of Mattoon. The Department, under his supervision, was charged with the duty of seeking to assure against similar attacks upon other innocent persons by capturing the assailant.

On January 29, 1952, a meeting to plan strategy was held at the Police Department (Abst. 23-24). The plaintiff, Paul Hammers, was present. There were two or more other officers present. A plan was made. It entailed staking out several officers in private cars in the vicinity in which the attack had occurred to avoid alarming the culprit. Another officer, Mr. Heckwine, was to be disguised as a woman and to serve as a "decoy". The arrangements were set up so that the Department would have approximately four men or more who could constantly observe the decoy officer as he walked along the sidewalks in the danger area. Heckwine was to continue to walk the area and was on his fifth round when he was assaulted (Abst. 25). After the trap should have been "sprung" following the assault upon Heckwine, in his female disguise, it was found that the plaintiff, who was an alerted officer participating in the plan, had left his post (Abst. 26).

On February 1, 1952, Chief Jones submitted to the Chairman of the Board of Fire and Police Commissioners a set of charges (Abst. 3-5).

Trial was had on those charges. The Appellate Court of Illinois reversed an Order of the Board discharging Petitioner Hammers. This reversal was because of inadequate notice of the hearing. (*Hammers* vs. *Board of Police and Fire Commissioners,* 1 Illinois Appellate (2d) 421; 117 Northeastern Reporter (2d) 798. *Abstract Only.*)

After the reversal, Hammers was reinstated. May 17, 1954 there were served upon him personally the same charges as those preferred by Chief Jones February 1, 1952 concerning his leaving his post of duty on January 29, 1952. Other charges were added. (Abst. 2-3). These other charges were withdrawn. The notice served upon Hammers contained a complete copy of the Jones charge of February 1, 1952, even including the copy of the signature of Chief Jones, as accuser. It was not only the same as the one upon which hearing was had February 4, 1952, which hearing was a nullity, as a matter of law, because of the Appellate Court's subsequent holding that the Board had no jurisdiction because of the inadequacy of notice—the Charge was not only the same as that one, but the Charge, in point of fact, was actually a word-for-word incorporation of the letter of complaint submitted by Chief Jones. (Abst. 3-5).

The cause was then called for hearing May 21, 1954, before the Board pursuant to the written notice served upon the plaintiff May 17, 1954 (Abst. 21). The plaintiff, by his counsel, presented, orally, a denial of the charges, of the power of the Board to bring charges, of the jurisdiction of the Board and of the jurisidiction of the Board to bring the charges. He also made an oral motion attacking the charges. He obtained no ruling upon the motion (Abst. 22).

Some four hundred twenty-five pages of testimony and evidence were taken. All charges except those contained in the letter of complaint submitted by Chief Jones February 1, 1952 (Abst. 3-5) were withdrawn (Abst. 11) and the Board's decision was expressly stated to be based solely upon the charges contained in Chief Jones' complaint of February 1, 1952 (Abst. 11).

The Petitioner was, at that hearing, given ample time to assemble his case, arrange for the attendance of witnesses and complete his preparation; then all except the Chief Jones charges were withdrawn or stricken because the Board concluded they were barred, as claimed in Petitioner's special defenses; the labyrinthine pathways of this evidence have been explored before four State of Illinois tribunals.

The only point made by the Petitioner in his present Petition for Certiorari is that his discharge as a policeman was violative of the Federal Constitution because the Administrative Board acted as accuser and judge. But it is essential to recall that the Board did not act as accuser and judge. The record clearly shows that the accuser was Chief Larkin H. Jones (Abst. 3-5), and that the only connection the Board had with the only charges upon which the plaintiff was tried and dismissed was to have them written down and personally served, to conform with the Statute and with the Appellate Court's opinion in *Hammer* vs. *Board,* 1 Ill. App. (2d) 421. This writing clearly showed Jones was the accuser.

The Constitution of the State of Illinois contains substantially the same protective provisions as those in the United States Constitution upon which Petitioner seeks now to rely. And simply clarifying the situation, as above, so as to demonstrate that the Chief of Police was the Accuser, shows the inapplicability of the cases relied upon

by the Petitioner, viz, *Commissioners of Drainage District* vs. *Smith,* 233 Illinois 417; *Smith* vs. *Department of Registration, etc.,* 412 Illinois 332; *St. Joseph Stock Yards Co.* vs. *U. S.,* 298 U. S. 38; *Tumey* vs. *Ohio,* 273 U. S. 510, and the other authorities cited by Petitioner in support of the well established and perfectly proper rule that a litigant cannot be compelled to submit his controversy to a tribunal of which his adversary is a member. (Pages 425-426, *Commissioners of Drainage District* vs. *Smith,* 233 Illinois 417.)

The claimed analogy between the instant case and the hypothetical situations set up by the Petitioner, such as the one on Page 15 of his Petition, is indeed too attenuated to carry any weight.

In *Tarr* vs. *Hallihan,* et al, 375 Illinois 38, at Pages 40 and 41 of its opinion, the Supreme Court of Illinois said:

> "We are unable to agree with appellants' contention that the procedure is lacking in due process because the complaints were signed by an employee of the department. That appellants are entitled to a hearing before an unbiased tribunal is not questioned. However, the mere fact that charges are made by an employee of the department does not, in our opinion, establish that the dental examining committee would be prejudiced against appellants."

By the same token, the fact that the Chief of Police preferred the charges involved here is not a valid ground to support a contention that the discharge of the Petitioner from the Police Department was unconstitutional.

CONCLUSION.

The Appellate Court of Illinois, in entering its final judgment in this cause, accurately stated the situation in its quotation from *Pipe Trades, Inc.* vs. *Rauch,* 2 Illinois

(2d) 278, on Page 17 of the Illinois Appellate Court opinion in the instant case (Pages 32 and 33, Petition for Writ of Certiorari herein):

> "In *Pipe Trades, Inc.*, vs. *Rauch*, 2 Ill. 2d 278, it is said at page 389: 'Looking to the first contention, the argument advanced seems to be that due process of law means judicial process, a premise long since rejected by State and Federal courts. (Citations.) Insofar as due process of law arises in public administrative law, the rule is concisely stated in 42 Am. Jr., Public Administrative Law, Sec. 116, as follows: 'While the constitutional guaranty of due process of law, the object of which is to preserve personal and property rights against the arbitrary action of public officials, applies to administrative as well as judicial proceedings, due process is not necessarily judicial process, except in the case of punishment for crime, and all the formalities of judicial proceedings are not essential to constitute due process of law in an administrative proceeding.' The same section, and many of the cases cited therein, tells us that administrative process by a board, executive or administrative officer, is as much due process as is judicial process, particularly when judicial review of the administrative action is provided.' Again the court says at page 290: 'Thus, the requirements have been fully met in this case for it is unchallenged that appellant had notice and a hearing, and, further, it is apparent that a full process of judicial review has been available before the administrative order becomes final.' "

The Supreme Court of Illinois rejected the claim of Petitioner Hammers that his constitutional rights had been violated. It denied his Petition for Leave to Appeal to that Court (Pages 38 and 39, Petition for Writ of Certiorari here). That denial, the Opinion of the Appellate Court, the

Judgment of the Trial Court and the Order of the Board are all supported and the instant Petition for Writ of Certiorari should be denied.

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Office - Supreme Court, U.
FILED
JAN 11 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1956.

No. 641.

PAUL HAMMERS,
Petitioner,

vs.

THE BOARD OF FIRE AND POLICE COMMISSIONERS
of the City of Mattoon, Illinois, a
Municipal Corporation,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois, Cause No. 34,163.
There Heard on Appeal from the Appellate Court of Illinois, Third District.

REPLY BRIEF OF PETITIONER FOR WRIT OF CERTIORARI.

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May It Please the Court:

The respondent Board fully realizes that it, and it alone, filed all of the charges in this case, and it realizes that the law is well settled that the Board cannot be both accuser and judge. It is interesting to note that the

Board does not cite one single case in an attempt to contradict that well settled rule.

How, then, does the Board meet our argument that the Board prepared and filed the charges, and then sat as judge over its own charges? The answer: They attempt to maneuver and manipulate the record by arguing that charges two through six were withdrawn! But the only reference to that "withdrawal" made by the Board in its Brief is to page 11 of the Abstract. But that reference is to the **decision** (Abstract p. 11). Therefore, the first time that anyone, including the Board's counsel, knew that those charges were "withdrawn" was when the accuser wrote its decision as the hearing and determining tribunal. What an unfair attempt by the hearing tribunal to protect its decision and to sustain the charges which it had prepared, signed and filed!

Certainly no hearing tribunal or court can properly and honestly say that any charge is withdrawn when the record does not disclose that withdrawal. The record does not indicate that counsel for either side withdrew the charges, or that either counsel knew that a withdrawal was even anticipated, and Respondent in its Brief does not so contend. Therefore, the Respondent Board—**the accuser which was so anxious to sustain its own accusations**—manipulates and maneuvers and shifts the evidence and says that charges two through six were withdrawn. They were not withdrawn in the record, and the record so shows. Respondent's Brief does not contend to the conrary.

Please note that the Board rested its case (the accuser-judge calls the case "its case") at page 56 of the Abstract. Respondent (Petitioner here) rested his case at page 87 of the Abstract. And evidence on charges two through six, the charges which Respondent Board says were "withdrawn," were heard throughout the entire record. There

is nothing in the record to indicate that the Board withdrew any charges when it rested its case at page 56 of the Abstract, or when Hammers (Petitioner here) rested his case at page 87 of the Abstract.

To prove this point we point out the pages in the Abstract on which evidence was heard on charges two to six in order to prove that Mr. Hammers was tried on all six charges from the beginning of the hearing through to the time when both sides rested.

Evidence was heard on charges two through six on pages of the Abstract as indicated in the following digest:

Charge Two: That Hammers, petitioner here, used profane language and was guilty of insubordination, pages 79 and 84.

Charge Three: That Hammers devoted time while on duty to sale of used cars, pages 28, 29, 30, 31, 34, 35, 37, 38, 56, 57, 58, 60, 63, 70, 83, 85, 86.

Charge Four: That Hammers shirked his duties during an altercation at the Star Cafe, pages 41, 42, 43, 60, 61, 63, 70, 71, 72, 79, 83. And at the close of all the evidence the Board had admitted its Exhibit Four as a part of its evidence on the Star Cafe incident (Abstract page 88). And please note that both sides had rested at page 87 of the abstract, and there had been no withdrawal of any of the charges.

Charge Five: That Hammers shirked his duties during a disturbance at the Russell Tomer home, pages 52, 53, 54, 55, 56, 60, 61, 66, 67, 68, 69, 81, 82, 83, 86.

Charge Six: That Hammers took, without permission, a loaf of bread that had been left at the police station, pages 35, 36, 37, 39, 40, 60, 61, 72, 76, 80.

It is obvious, therefore, that all six charges were tried from the beginning of the record at page 22 of the Ab-

stract to the closing of the evidence at page 87 of the Abstract, and that they were tried before and decided by the accuser, thereby depriving Officer Hammers of due process of law.

On page 4 of Respondent's Brief it is argued that the Respondent Board did not act as accuser, but that the charges were brought by Larkin Jones, the former chief of police. The Board, in attempting to defend its action now resorts to argument which is disproven by the record. Pages 2 to 8 of the Abstract show that the charges were prepared on the letterhead stationery of the Board, prepared by the Board, and signed by the three Board members (Abstract page 8). Yes, signed by the members of the Board which had just been reversed by the Illinois Appellate Court in the same case (Abstract page 2), and the Board that was so anxious to sustain its new charges that it attempted to shift, maneuver, and manipulate the record in an attempt to hide the fact that it was both accuser and judge!

CONCLUSION.

This maneuvering and manipulating makes it all the more necessary that in considering this case serious consideration needs to be given the language of this Court in **In re Murcheson, 349 U. S. 133, 136, 75 S. Ct. 623,** where this Court said in part:

> "A fair trial in a fair tribunal is a basic requirement of due process. . . . But our system of law has always endeavored to prevent even the probability of unfairness. . . . Every procedure which would offer a possible temptation to the awerage man as a judge . . . not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law. . . . But to perform its high function in the best way, justice must satisfy the appearance of justice."

The Respondent has clearly failed to show that it was not both accuser and judge, and we have proven beyond all doubt that such was the case.

Therefore, we respectfully submit that the Fourteenth Amendment has been grossly violated, and that the prayer of the Petition for Certiorari should be granted.

Respectfully submitted,

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